



UNITED STATES PATENT and TRADEMARK OFFICE

27 SEP 2006

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Philips Electronics North America Corporation
Intellectual Property & Standards
1109 McKay Drive, M/S41-SJ
San Jose, California 95131

In re Application of	:	DECISION ON
Koninklijke Philips Electronics N.V.	:	
PCT No.: PCT/IB03/03480	:	
Application No: 10/525,331	:	
Int. Filing Date: 06 August 2003	:	PETITION UNDER
Priority Date: 22 August 2002	:	
Attorney's Docket No.: GB020138US	:	
For: IMPROVED PARAMETER ...	:	
RANGING SYSTEMS	:	37 CFR 1.47(b)

This is in response to the "PETITION TO MAKE APPLICATION FOR PATENT UNDER 37 C.F.R. §1.47(b)" filed on 19 May 2006. The requisite \$200 petition fee has been paid.

BACKGROUND

On 06 August 2003, applicant filed international application PCT/IB2003/03480, which claimed an earliest priority date of 22 August 2002. The thirty-month (30) time period for paying the basic national fee in the United States of America expired at midnight on 22 February 2005.

On 22 February 2005, applicant filed for entry into the national stage in the United States of America. Filed with the application was, *inter alia*, the requisite basic national fee. However, no executed declaration or oath was submitted at such time.

On 22 March 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, *inter alia*, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date" must be submitted within two months from date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

In an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4), applicant filed on 19 May 2006, *inter alia*, the following:

- 1) a petition under 37 CFR 1.47(b);
- 2) the required petition fee;

- 3) an executed declaration.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, (4) an oath or declaration by the 37 CFR 1.47(b) applicant on behalf of and as agent for the non-signing inventor, (5) proof that the 37 CFR 1.47(b) applicant has sufficient proprietary interest in the application, and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Applicant has satisfied items (1) and (3), and (5) but not items (2), (4) and (6) thus not completing the requirements under 37 CFR 1.47(b).

Applicant has satisfied item (1) since the petition fee has been provided.

Regarding requirement (2), section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

INVENTOR CANNOT BE REACHED:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under **37 CFR 1.47**, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under **37 CFR 1.47**.

Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under **37 CFR 1.47**. **37 CFR 1.43** may be available under these circumstances. See **MPEP § 409.02**. Such a petition under **37 CFR 1.47** will be dismissed as inappropriate.

The averments of Adam Stroud are insufficient to support a finding that the nonsigning inventor, Josi Rosenfeld, could not be reach or located after diligent effort because Mr. Stroud's declaration fails to show diligent effort to locate inventor Ms. Rosenfeld. Mr. Stroud has not shown that he has searched for the above non-signing inventor's new address by using a broad search in the internet and phone directory, which would show diligent effort by Mr. Stroud to try find Ms. Rosenfeld.

Regarding item (3), applicant has stated the last known address of the inventor:

Ms. Josi Rosenfeld
Flat 6
14 Rehov Reuven
Bakaa, Jerusalem, Isareal

Regarding item (4) an executed declaration has not been provided because no declaration has been submitted signed on behalf for the non-signing sole inventor, Ms. Rosenfeld. Note MPEP 1820.

Regarding item (5) applicant has submitted sufficient proof that applicant has sufficient proprietary interest in the application because there is an assignment from Ms. Rosenfeld to Philips Electronics, Inc.

Regarding item (6) applicant has not presented an adequate showing that the granting of this petition is necessary to preserve the rights of the parties or to prevent irreparable damage.


Accordingly, it is not appropriate to accord the national stage application status under 37 CFR 1.47(b) at this time.

CONCLUSION

The petition under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (571) 272-3276
Fax: (571) 273-0459